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CBS AND GENERAL SEEK SETTLEMENT IN LIBEL LAWSUIT

LAWYERS IN NEGOTIATION

Both Sides in Westmoreland Case Say Talks Progress Outside the Courtroom

By M.A. FARBER

Lawyers for Gen. William C. Westmoreland and CBS have opened talks aimed at settling the general's \$120-million libel suit against the network.

Under the terms of a proposed settlement discussed yesterday, CBS would not disavow the 1982 documentary on the Vietnam War that is the basis of the suit, and would not pay any money to General Westmoreland.

The parties, according to legal sources on both sides of the case, would issue a joint statement saying they now agreed that "the court of public opinion," rather than a court of law, was the appropriate forum for deciding who was right in the case. And CBS would not demand payment of any court costs by the general.

"The talks are very far along," a lawyer familiar with the negotiations, who asked not to be identified, said last night. He said a formal withdrawal of the suit could come this week.

Judge Informed of Talks

"The question," said another lawyer in the case who also asked not to be identified, "was whether either party, and whether the country, would be better off with a verdict against CBS or a verdict against General Westmoreland. Some things, once aired and explained, are better left to the judgment of history."

The negotiations came after 18 weeks of testimony by 36 witnesses in Federal District Court in Manhattan and only a week before the case — which is believed to have cost at least \$7 million to \$9 million — was scheduled to go to the jury. Judge Pierre N. Leval was informed last night of the talks and was to meet with the lawyers at 11 this morning.

The discussion was apparently initiated last week by Dan M. Burt, General Westmoreland's principal lawyer. Mr. Burt — who has described the documentary as "a powerful work of fiction" — declined to comment yesterday, as did David M. Boies, the chief lawyer for CBS. Mr. Boies had defended the broadcast as being true.

Foundation In the Red

Senior CBS executives, including Edward M. Joyce, the president of CBS News, and Van Gordon Sauter, the executive vice president of the CBS broadcast group, could not be reached last night. General Westmoreland, who commanded United States forces in Vietnam from January 1964 to June 1968, was also unavailable.

Mr. Burt, according to legal sources, approached Mr. Boies several weeks ago and asked whether, if General Westmoreland abandoned his suit, CBS would insist that he pay the network's court costs for depositions, trial transcripts and other items, which could amount to \$200,000 or more. Mr. Boies, the sources said, was noncommittal.

The costs of pursuing the case for General Westmoreland — about \$3.25 million since the suit was filed in September 1982 — have been borne by the Washington-based Capitol Legal Foundation, of which Mr. Burt is president. Mr. Burt said recently that the foundation, which is supported by a number of conservative foundations and businessmen, was "\$500,000 in the hole."

On Friday morning, the sources said, Mr. Burt had breakfast with George Vradenburg 3d, the general counsel for CBS. Mr. Vradenburg indicated that CBS would not seek court costs from General Westmoreland — who could be held personally liable for them. And on Saturday, wider-ranging talks designed to settle the case were undertaken.

The highly publicized case, which CBS did not succeed in having dismissed before trial began last Oct. 9, raised a number of issues relating to press freedom and to the conduct of the war, particularly in the year before the enemy's Tet offensive of January 1968.

The suit stemmed from a CBS Reports documentary titled "The Uncounted Enemy: A Vietnam Deception," produced by George Crile and narrated by Mike Wallace.

Wallace Was Due to Testify

Both men are individual defendants in the case, as is Samuel A. Adams, a former Central Intelligence Agency analyst who was a paid consultant for the broadcast. Mr. Crile and Mr. Adams have already testified; Mr. Wallace was scheduled to take the stand tomorrow or Wednesday.

The documentary charged that General Westmoreland's command had engaged in a "conspiracy" in 1967 to show

progress in the war by understating the size and nature of the North Vietnamese and Vietcong enemy. As a result of this "conscious effort," it said, President Johnson and American troops, as well as the public, were left "totally unprepared" for the Tet offensive.

The broadcast said that, for political and public relations reasons, General Westmoreland imposed an "arbitrary ceiling" of 300,000 on reports of enemy strength, mainly by removing the part-time self-defense forces from the official listing of enemy troops and refusing to allow inclusion of their current number in a special intelligence estimate for the President in November 1967.

The documentary also asserted that the command had "systematically blocked" reports from its officers of high infiltration in the five months before the Tet attack, and had attempted to "cover up" after the offensive by altering historical data on enemy strength.

'Insignificant Militarily'

In nine days of testimony last fall, General Westmoreland denied he had acted improperly and defended his stewardship of American troops. He said he had deleted the self-defense forces — newly estimated in 1967 at 120,000, a 50,000 increase — because he had come to believe that they were insignificant militarily and that their inclusion in the order of battle at a high number would only mislead Washington and the press.

The 70-year-old general, who retired in 1972 after serving as Army Chief of Staff, also said he was unaware of infiltration of a greater magnitude than was reported by his command or of any

Continued

attempt to tamper with figures on enemy strength after the Tet offensive.

General Westmoreland contended that the program — whose thesis of military deception had been advanced publicly by Mr. Adams for more than a decade — had defamed him by saying he had lied to President Johnson and the Joint Chiefs of Staff. He did not sue over the question of whether he or his command had deceived Congress, the public or the press, which CBS said was basically "the message" of the broadcast.

To prevail in his suit — General Westmoreland said he would give any award he received to charity — the plaintiff had to prove not only that the documentary was false but that CBS knew it was false or acted with "reckless disregard" for the truth.

Shortly after the trial began, Judge Leval said the issue in the case was not whether General Westmoreland's command was "right or wrong" in its reports of enemy strength but whether the general had "attempted to deceive" his superiors.

Twice last month the judge reminded the jury that the broadcast "made accusations of dishonesty. Dishonesty," he said, "is what the case is about, not inaccuracy."

Dispute, But Not Deception

On Jan. 31, in "interim summations" that were previews of the summations the lawyers were expected to give next Monday, Mr. Burt said a 1967 disagreement over enemy strength involving the C.I.A. and the military had "all the earmarks of a very bitter dispute but not evidence of any conspiracy to deceive."

Mr. Boies told the jury that it was

"not an honest disagreement." The actions by the military, he insisted, were rightly characterized by the broadcast "as a conspiracy."

General Westmoreland called to the stand 19 witnesses, including a number of his senior military aides in Vietnam and a battery of ranking Government officials from the Johnson Administration: Walt W. Rostow, national security adviser to the President; Robert S. McNamara, Secretary of Defense; Paul H. Nitze, Deputy Secretary of Defense; Robert W. Komer, chief of the Vietnam pacification program; and George A. Carver Jr., chief of Vietnamese affairs for the C.I.A.

Virtually all of these witnesses testified that the general did not, would not — and even could not — deceive his superiors.

CBS began presenting its case on Jan. 8. Besides Mr. Adams and Mr. Crile, its witnesses included George W. Allen, a former deputy to Mr. Carver; a number of other C.I.A. and military intelligence analysts from 1967, and, in recent days, two key aides to General Westmoreland.

A 'Political Bombshell'

One of those aides — Maj. Gen. Joseph A. McChristian — testified that, in May 1967, General Westmoreland delayed sending a cable to Washington reporting increased strength of enemy irregulars because it would have been a "political bombshell." General McChristian, who was General Westmoreland's chief of intelligence from July 1965 to June 1967, said "it was improper not to send a strength report forward based on political considerations."